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No. 87-1682

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

CHRYSLER WORKERS ASSOCIATION, *et al.*,
Petitioners,

v.

CHRYSLER CORPORATION; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW LOCALS #371, #1331, #1435, #2035 and #2147,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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RESPONDENT UAW'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Is the Sixth Circuit Court of Appeals in conflict with the view expressed by other circuit courts that the staute of limitations explicated in *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983) should be tolled pending an employee's exhaustion of internal union remedies?

2. Did the Sixth Circuit Court of Appeals fully and properly adjudicate all of plaintiffs' causes of action?

3. Did the Sixth Circuit Court of Appeals properly find that defendant Chrysler Corporation did not violate its contractual responsibilities?

4. Is the issue of whether plaintiffs were entitled to a jury trial properly before this Court?

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PRAYER

The Respondents International Union, United Automobile, Aerospace & Agricultural Implement Workers of America—UAW, Locals # 371, # 1331, # 1435, # 2035 and # 2147, respectfully request that this Court deny the petition for writ of certiorari seeking review of the Sixth Circuit's opinion in this case. That opinion is reported at 834 F.2d 573 (6th Cir. 1987).

STATEMENT OF THE CASE

Respondents accept the facts as stated by the Sixth Circuit. Petitioners' Statement of the Case is misleading and inaccurate in several respects.

Iinitially, it must be noted that although petitioners refer several times to "classes of plaintiffs", this case was not brought as a class action. Formal class certification was neither sought nor granted at any stage of this litigation.

Further, petitioners fail to acknowledge that their acceptance of work opportunity at the Lima Tank plant pursuant to the 1979 collective bargaining agreement allowed them to carry their full seniority with them for benefits purposes, i.e. holiday pay, payment in lieu of vacations, pensions, insurance and the Supplemental Employment Benefit Plan. Additionally, none of the plaintiffs came to the Lima Tank facility as "new hires" in that their work opportunity status excused them from the probationary period required of off-the-street hirees.

To reiterate, all plaintiffs, including the so-called Indiana plaintiffs who came from Chrysler's plant in New Castle, Indiana, received the benefits of work opportunity status including waiver of the probationary period and use of their full seniority for benefits purposes. All plaintiffs, including the Indiana plaintiffs, also bore the burden of work opportunity status—that they were no longer entitled to be recalled to their home plants in line with their seniority. Instead, plaintiffs under the terms of the 1979—1982 collective bargaining agreement between Chrysler and the UAW, could get back to their home plants in only one of three ways. Pursuant to § 65 of the collective bargaining agreement, employees accepting work at a plant in the same labor market area as their home plant "shall have no right to return to their former plants unless and until they are permanently laid-off from the new plant." Pursuant to the Ohio Letter of

Understanding employees working at a plant more than 50 miles from their home plant "shall be recalled to [their home plants] before it hires new employees unless such a recall would adversely affect the continuous, efficient, and orderly operation of either of the plants involved." Lastly, pursuant to the Memorandum of Understanding Work Opportunity, which is a supplement to the 1979 collective bargaining agreement, employees who accepted work opportunity could at two times during the contract term make an election to return to their home plant, if the job to which they would return would otherwise have been filled by a new hire. That Memorandum of Understanding, commonly known as "Sadie Hawkins", also provided that Chrysler would not incur liability for violations or error in the administration of the Memorandum.

Thus, during 1981-1982, at the time that Chrsyler was contemplating the sale of its Defense subsidiary, [Chrysler Defense Inc.] which included the tank plants such as Lima, the employees working at the Lima plant who came from other Chrsyler plants under work opportunity were already "locked in" at Lima and unable to return to their home plants under the normal recall procedure but instead were limited to the procedures of § 65 (return upon indefinite layoff); the Ohio Letter (return when home plant hires new employees if such return does not adversely affect operations of either plant); or the Sadie Hawkins letter (exercise option to return when home plant hires new employees and other conditions are met.)[1]

The UAW was not given an opportunity to bargain over Chrysler's decision to sell the Defense plants to General Dynamics but did engage in discussion over the effects of that decision. Eventually, General Dynamics

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[1] At the time of sale, these contingent return rights were of speculative value given Chrysler's real potential for collapse.

agreed to recognize the UAW as the bargaining agent for employees at the plants formerly run by Chrysler Defense, Inc. and to be bound by all labor agreements between Chrysler and the UAW until the expiration of those agreements which was September 14, 1982. Subsequently, representatives of the UAW and General Dynamics prepared a document which was a "de-Chryslerized" version of the 1979 collective bargaining agreement which changed the name and covered plants to reflect the plants that were purchased by General Dynamics. It is undisputed that the document, which was effective from March 16, 1982 until September 14, 1982, did not alter any rights that covered employees possessed under the Chrysler agreement.

At the insistence of UAW International vice-president, Marc Stepp, representatives of the UAW, Chrysler and General Dynamics met in April of 1982 to iron out unique potential problems which might arise in transfers of employees between Chrysler and General Dynamics. As a result of that meeting the parties created a methodology to handle the transfers and memorialized their agreement that any contractual rights an employee had under the 1979-1982 Chrysler collective bargaining agreement to leave what was now a General Dynamics plant to return to a home Chrysler plant or vice versa were preserved until September 14, 1982, the date of the expiration of the UAW-Chrysler agreement and the UAW-General Dynamics agreement. The agreement was set forth in two companion documents. The first was a letter from George Chopp of General Dynamics to Marc Stepp of the UAW dated May 18, 1982. The second virtually identical document was a letter to Marc Stepp from T.W. Miner of Chrysler Corporation dated June 7, 1982. All parties to those agreements agree that the documents preserved and clarified whatever home plant seniority rights existed under the 1979 Chrysler agreement until the end of that agreement.

In July of 1982, the UAW held two meetings with the affected UAW membership of the Lima Tank plant to explain that their contractual rights to return to their home Chrysler plants were still in effect as they had existed under the 1979 UAW-Chrysler collective bargaining agreement until the expiration of that agreement in September of 1982. The local posted a notice announcing the first of these meetings. The notice read:

ATTENTION
WORK OPPORTUNITY EMPLOYEES

MEETING IS SCHEDULED TO EXPLAIN THE SENIORITY STATUS OF OUR WORK OPPORTUNITY MEMBERS. IT WILL BE HELD THURSDAY, JULY 1, 1982 AT THE UAW UNION HALL.

FIRST MEETING .....1:00 P.M.

SECOND MEETING .....4:00 P.M.

INTERNATIONAL REPRESENTATIVES WILL BE HERE TO EXPLAIN THE AGREEMENT AND TO ANSWER QUESTIONS.

DARRELL COLE, PRESIDENT
LOCAL 1075, UAW

Subsequently, the UAW and General Dynamics negotiated a new collective bargaining agreement which was effective from September 27, 1982 to September 14, 1985. That new collective bargaining agreement does not contain § 65, the Ohio Letter or the Sadie Hawkins letter as existed in the 1979 UAW-Chrysler collective bargaining agreement or any language comparable thereto, nor does it contain any other provision allowing tank plant employees of General Dynamics any return rights to home Chrysler plants. The contract was explained to the Lima membership at a ratification meeting held in Lima in September of 1982 and they ratified it.

During the same period of time Chrysler and the UAW entered into a new collective bargaining agreement which altered and/or amended the 1979-1982 Chrysler-UAW collective bargaining agreement. The new agreement deletes the Lima Tank plant from the index of units and deletes the Lima Tank plant local from the title page which describes the parties to the agreement.

Subsequently, several employees at the Lima Tank plant (including some but not all of the Plaintiffs) filed or sought to file grievances protesting what they perceived to be a refusal to allow them to be recalled to their home plants at Chrysler. The UAW did not process the grievances that were actually filed and would not file any grievances on the issue based upon its assessment that the grievances were not meritorious because no contractual provisions were violated. The UAW so informed the employees.

Only one Plaintiff, Joseph Gaw, processed a timely appeal to the Public Review Board on the withdrawal of his grievance.[2]

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[2] Mr. Gaw appealed to the Public Review Board [PRB] from the withdrawal of his grievances protesting his classification as a work opportunity employee and protesting his failure to be recalled to his home Chrysler plant in New Castle, Indiana. The latter grievance challenging, in particular, the June 7, 1982 Letter of Understanding between the UAW and Chrysler. The PRB found that his challenge to the contract interpretation under which he was considered as a work opportunity employee was untimely.

With regard to Gaw's challenge to the June 7, 1982 UAW-Chrysler letter agreement, the PRB found that the letter agreement "did not change the seniority or recall rights of any employee, but reaffirmed their continued existence following the sale of Chrysler Defense Industries by the parent corporation." The PRB also found that "It is true that the expiration of the collective bargaining agreement while [sic] Chrysler and the subsequent ratification of the new agreement by General Dynamics employees terminated all recall rights to Chrysler Corporation."

REASONS FOR DENYING THE WRIT OF CERTIORARI

I. THE SIXTH CIRCUIT COURT OF APPEALS IS NOT IN CONFLICT WITH THE VIEW EXPRESSED BY OTHER CIRCUIT COURTS THAT THE STATUTE OF LIMITATIONS EXPLICATED IN *DEL-COSTELLO V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS*, 462 U.S. 151 (1983) SHOULD BE TOLLED PENDING AN EMPLOYEE'S EXHAUSTION OF INTERNAL UNION REMEDIES.

It is respectfully submitted that the Sixth Circuit's reference to the statute of limitations in regard to the plaintiffs from Indiana is dictum and unnecessary to the holding that all plaintiffs had no cause of action against Chrysler or the unions. With respect to the unions, the Sixth Circuit specifically observed:

> Although we do not find that such a decision is mandated as a matter of law under the statute of limitations defense asserted by defendant unions, we affirm the judgment in their favor because of the peculiar nature of the § 301 claim.
>
> [Decision of the Sixth Circuit filed November 25, 1987 (A22)]

The Sixth Circuit held that Chrysler did not violate its contractual responsibilities with respect to plaintiffs' claimed transfer rights and since plaintiffs' claim against the unions was "inextricably interdependent" upon plaintiffs' claim against Chrysler, plaintiffs' claim against the unions must also fail. All plaintiffs, including the Indiana plaintiffs, claim under the same contract. As such, the cause of action of the Indiana plaintiffs is barred by the Sixth Circuit holding that Chrysler did not violate its contractual obligations. The statute of limitations is merely an additional ground to support the judgment against the Indiana plaintiffs.

Thus, even assuming arguendo that the Sixth Circuit's view as to the applicability of the bar of the statute of limitations to the Indiana plaintiffs some how raises a conflict (which Respondent Unions vigorously disagree) the conflict itself would not be sufficient reason to grant review because this case was and could be decided on the contractual ground making resolution of the alleged conflict irrelevant to the outcome of the case. See, e.g. *Sommerville v. United States*, 376 U.S. 909 (1964); *The Monrosa v. Carbon Black, Inc.*, 359 U.S. 180 (1959).

Additionally, the Sixth Circuit's opinion does not conflict in any way with decisions from other courts which address the issue of whether exhaustion of internal union remedies tolls the statute of limitations. The Sixth's Circuit's sole reference to tolling referred to the filing of the "grievance" by Gaw. The Sixth Circuit did not mention the internal union appeal. The grievance procedure is governed by the collective bargaining agreement between the employer and the union. The internal union appeal procedure is separate, distinct and independent from the contractual grievance procedure. It arises not from the contract but from the union constitution. Although petitioners may well disagree with the court's finding, based on the particular facts of the Indiana plaintiffs' claims, that the Gaw grievance did not toll the statute, such a finding is strictly confined to the facts of the case, does not conflict with any other circuit decision and presents no issue worthy of review.

II. THE SIXTH CIRCUIT COURT OF APPEALS FULLY AND PROPERLY ADJUDICATED ALL OF PLAINTIFFS' CAUSES OF ACTION.

Respondent Unions respectfully submit that petitioners raise no question of constitutional import here. They received a full and fair opportunity to be heard in their briefs and in oral argument. They received a full and fair adjudication on all of their claims in the District

Court, in the Sixth Circuit's opinion and in the denial of their motion for rehearing. Indeed, in denying the petition for rehearing, the Sixth Circuit specifically concluded:

> "that the issues raised in the petition were fully considered upon the original submission and decision of the case."
>
> [Order of the Sixth Circuit Denying Petition for Rehearing, A67]

What petitioners fail to acknowledge is that the Sixth Circuit specifically addressed their allegations which were independent of the contract claim when it found:

> In the context of the economic conditions then faced by Chrysler and the sale of its defense unit to a new and unrelated employer in early 1982, we find the arrangement worked out by UAW with Chrsyler and with GD, the purchaser of the Lima plant, as a matter of law to constitute neither a conspiracy nor a fraud operating against the interests of former Chrysler employees. Shortly after the letter agreement the Union put plaintiffs and other "work opportunity employees" who had transferred to the Lima plant on notice of a meeting to be attended by International Union representatives in July of 1982 to "explain the agreement and to answer questions." Plaintiffs undeniably had the opportunity to ask the Union about their status as GDLS employees. There was no "affirmative" act of concealment.
>
> [Decision of the Sixth Circuit filed Nov. 25, 1987 (A20, 21)]

In light of those factual findings, there was no predicate for the cause of action recognized by the Sixth Circuit's earlier case of *Storey v. Teamsters*, 759 F.2d 517 (6th Cir. 1985). Further, as the "arrangement worked out by the UAW with Chrysler and with GD", i.e., the letter agreements, merely continued existing rights until the expiration of the collective bargaining agreement,

and did not change them, there was no agreement upon which the Unions had a duty to hold a ratification vote and whatever changes or deletions occurred in the new UAW-GD agreement or the new UAW-Chrysler agreement were undisputedly put to a ratification vote.

Petitioners merely disagree with the decisions of the Sixth Circuit and their disagreement does not give rise to any issue worthy of review.

III. THE SIXTH CIRCUIT COURT OF APPEALS PROPERLY FOUND THAT DEFENDANT CHRYSLER CORPORATION DID NOT VIOLATE ITS CONTRACTUAL RESPONSIBILITIES.

It is obvious from the form of this question as presented by petitioners, that petitioners raise no issue worthy of review but merely disagree with the facts as found by the Sixth Circuit. This Court has consistently refused to grant certiorari to review evidence and discuss specific facts. *Texas v. Mead*, 465 U.S. 1041 (1984); *NLRB v. Hendricks County Rural Electric Membership Corp.*, 454 U.S. 170, 177 n.8 (1981); *United States v. Johnston*, 268 U.S. 220 (1925).

The Sixth Circuit here applied well-settled principles of law to the facts at hand. It is beyond dispute that the employer must deal directly with the Union as the exclusive collective bargaining representative. *J. I. Case Co. v. Labor Board*, 321 U.S. 332 (1944); *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967) rehearing denied 389 U.S. 892 (1967); *Emporium Capwell Co. v. Community Org.*, 420 U.S. 50 (1975). The agreements which petitioners seek to attack were entered into between an International Vice President of the UAW and a Vice President, Industrial Relations of Chrysler. It is simply ludicrous to argue that either of those two individuals did not have actual or apparent authority to bind their respective parties. See, e.g., *NLRB v. Truckdrivers, Chauffeurs & Helpers, Local Union No. 100*, 532 F.2d 569 (6th Cir.) *cert. denied* 429 U.S. 859 (1976).

The decision of the Sixth Circuit on the contract claims was correct and in accordance with long settled law. Petitioners raise no cognizable grounds to review that decision.

IV. THE ISSUE OF WHETHER PLAINTIFFS WERE ENTITLED TO A JURY TRIAL IS NOT PROPERLY BEFORE THIS COURT.

The Sixth Circuit properly granted summary judgment to respondents in accordance with this Court's decision in *Celotex Corporation v. Catrett*, —— U.S. ——, 106 S.Ct. 2548 (1986). Petitioners raise no issue worthy of this Court's review of that decision. As such, it would be wasteful of this Court's resources to even discuss the jury trial issue at this stage.

CONCLUSION

It is clear from the Petition that petitioners are merely asking this Court to re-evaluate all the evidence that was fairly and fully evaluated by the courts below. The decision of the Sixth Circuit was correctly rendered in accordance with well-settled principles of law. Petitioners raise no issue worthy of the Court's precious time. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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